July 6, 2001

By Hand

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
2nd Floor
Boston, MA 02110

Re: Reply Comments of Massachusetts Electric Company and Nantucket Electric Company on the Department's Proposed Changes to 220 CMR §§ 29.00 et seq.; D.T.E. 01-21

Dear Secretary Cottrell:

On behalf of Massachusetts Electric Company and Nantucket Electric Company (collectively "Mass. Electric" or "Company"), I am providing reply comments on the Department's proposed changes to billing procedures for calculating a residential rental property owner's responsibility for non-minimal use sanitary code violations, as set forth in 220 CMR §§ 29.00 et seq. These reply comments address some of the issues raised by other commenters in their initial comments and also respond to the questions raised by the Department at the Public Hearing in this docket. Thank you for the opportunity to provide these comments.

After reading the initial comments of the other parties and attending the public hearing, Mass. Electric continues to urge the Department not to revise the sanitary code billing regulations, 220 CMR §§ 29.00 et seq. Not only will the proposed regulation put utilities in the middle of landlord/customer disputes with little basis to make accurate determinations of the correct allocation of responsibility for the bill, as KeySpan Energy Delivery New England points out the proposed revisions would conflict with the requirements of the state sanitary code, which require that the landlord be responsible for the electric bill in a rental unit if the wiring in that unit is not in conformity with the code. In addition, as Western Massachusetts Electric Company points out, the regulations do not address the complications that would arise if the tenant buys generation from a competitive supplier.

The Department has asked, however, for proposals for another way to phrase the regulations that would allow for allocation between landlords and tenants in some way. (Transcript p. 6) Noting the problems that Mass. Electric and other parties raised about understanding the nature of the violation from the citation in the initial comments and the public hearing, Mass. Electric suggests a two-pronged proposal: If the utility can tell from the face of the citation what appliance is causing the problem, the utility will allocate usage amounts to the

landlord based upon a predetermined amount for that appliance. Mass. Electric recommends that interested parties form a working group to determine the appropriate usage amounts to apply to various appliances. The working group would report its conclusions to the Department, which would review and approve them for use in sanitary code billing disputes. This prescriptive prong would minimize the utility's unwinnable position as the fact finder in the middle of the dispute between the landlord and tenant. If the utility cannot tell from the face of the citation what appliances are the cause of the problem, then the regulation as currently written would apply. This prong would alleviate the need for the utility to do independent fact-finding on the nature and extent of the violation.

This proposal is in line with the recommendations of the Office of the Attorney General. The Attorney General recommends that the Department establish an objective standard or set of criteria for determining the electric usage of an appliance, apparatus, or service wrongly connected to a tenant's meter, which this proposal does. The Attorney General recommends that the Department retain the exclusive decision-making authority regarding apportionment of the bill and services, or in the alternative, narrowly tailor the decision-making authority delegated to utilities. Under this proposal, the utilities would implement the usage calculations required by the Department, which would limit their independent decision-making authority. It suits both the general goal of not delegating the decision-making to the utilities, and also the utilities' specific goal of staying out of landlord/tenant disputes.

The Attorney General also recommends that the Department include a deterrence provision in the proposed regulations that would discourage an owner from taking the risk to commit code violations where the benefit of such conduct might outweigh the cost to the owner. Mass. Electric's proposal does not include a deterrence provision, but Mass. Electric recognizes the validity of the Attorney General's recommendation. Mass. Electric believes that there are instances where landlords choose not to fix the violation, as the cost of the electric bill, if they are caught, is likely to be less than the cost of fixing the violation.

The Department asked Mass. Electric how long it takes the Company to handle a sanitary code violation. While many are resolved in the year in which the Company receives the citation, many take much longer. Of the approximately thirty five violations we open every year, our records indicate that we currently have open cases which originated since 1989 as follows:

1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
6	2	5	5	3	12	10	14	9	10	11	12	10[1]

[1]Mass. Electric anticipates that it will continue to receive notice of sanitary code violations in the remaining six months of 2001.

In conclusion, we recognize the Department's concern that these regulations may appear to cause unfairness to individual landlords, but we recommend that the Department maintain the current regulations as the best way to implement billing for Department of Health regulations. Landlords who have buildings with wiring that complies with the sanitary code can avoid the problem altogether by not requiring in the lease that the tenant be responsible for the electricity.

Thank you very much for the opportunity to provide these reply comments.

Very truly yours,

Amy G. Rabinowitz